

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
2 A Limited Liability Partnership  
3 Including Professional Corporations  
4 NEIL A.F. POPOVIC, Cal. Bar No. 132403  
5 MEREDITH A. JONES-MCKEOWN, Cal. Bar No. 233301  
6 LAI L. YIP, Cal. Bar No. 258029  
7 Four Embarcadero Center, 17th Floor  
8 San Francisco, California 94111-4109  
9 Telephone: 415-434-9100  
10 Facsimile: 415-434-3947  
11 npopovic@sheppardmullin.com  
12 mjonesmckeown@sheppardmullin.com  
13 lyip@sheppardmullin.com  
14 Attorneys for Defendant  
15 DATA PROCESSING SYSTEMS, LLC

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

18 AMBER KRISTI MARSH and STACIE  
19 EVANS, individually and on behalf of a  
20 class of similarly situated persons,

21 Plaintiffs,

22 vs.

23 ZAAZOOM SOLUTIONS, LLC, a  
24 Delaware Limited Liability Company,  
25 ZAZA PAY LLC, a Delaware Limited  
26 Liability Company dba DISCOUNT WEB  
27 MEMBER SITES, LLC, Unlimited Local  
28 Savings LLC, WEB DISCOUNT CLUB,  
WEB CREDIT REPT. CO.,  
MEGAONLINECLUB, LLC, and  
RAISEMONEY FOR ANYTHING;  
MULTIECOM, LLC, a Colorado Limited  
Liability Company dba ONLINE  
DISCOUNT MEMBERSHIP, WEB  
DISCOUNT COMPANY, and LIBERTY  
DISCOUNT CLUB; ONLINE  
RESOURCE CENTER, LLC, a Delaware  
Limited Liability Company dba Web  
Coupon Site, USAVE COUPON, and  
UCLIP, MOE TASSOUDJI, an individual,  
BILL CUEVAS, an individual, FIRST  
BANK OF DELAWARE, a Delaware  
Corporation; FIRST NATIONAL BANK  
OF CENTRAL TEXAS, a Texas  
Corporation; SUNFIRST BANK, a Utah  
Corporation; JACK HENRY &  
ASSOCIATES, INC., a Delaware  
Corporation dba PROFITSTARS;

Case No. CV-11-5226 (YGR)  
San Francisco County Superior Court  
Case No. CGC-11-510815

**DATA PROCESSING SYSTEMS,  
LLC'S NOTICE OF JOINDER AND  
JOINDER IN PENDING MOTIONS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Complaint Filed: May 9, 2011  
Trial Date: None Set

1 AUTOMATED ELECTRONIC  
2 CHECKING, INC., a Nevada Corporation;  
3 DATA PROCESSING SYSTEMS, LLC, a  
Delaware Limited Liability Company and  
DOES 1-10, inclusive,

4 Defendants.  
5

6 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
7 RECORD:

8 PLEASE TAKE NOTICE that defendant Data Processing Systems, LLC  
9 ("DPS") hereby joins:

- 10 1. the pending motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6)  
11 filed by defendants Zaazoom Solutions, LLC, Zaza Pay LLC, and Automated  
12 Electronic Processing Systems, Inc., in its entirety, and  
13 2. the pending motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) or, in the  
14 alternative, for a more definite statement pursuant to Fed. R. Civ. P. 12(e)  
15 filed by defendant First Bank of Delaware, with respect to its argument  
16 regarding plaintiff's third claim for relief (violation of Electronic  
17 Communications Privacy Act, 18 U.S.C. § 2510, *et seq.*),

18 both of which are set for hearing on February 28, 2012.

19 This joinder is based on the attached Memorandum of Points and Authorities,  
20 this notice and joinder, all of the pleadings and records in this action, and such other written  
21 and/or oral material as DPS may present at or prior to any hearing before this Court.

22

23

24

25

26

27

28

1 Dated: February 13, 2012

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3  
4 By /s/ Neil A.F. Popović  
5 NEIL A.F. POPOVIC  
6 MEREDITH A. JONES-MCKEOWN  
7 LAI L. YIP  
Attorneys for Defendant  
DATA PROCESSING SYSTEMS, LLC

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant Data Processing Systems, LLC ("DPS") joins: (i) the pending  
3 motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) filed by defendants  
4 Zaazoom Solutions, LLC, Zaza Pay LLC, and Automated Electronic Processing Systems,  
5 Inc. ("Zaazoom Motion"); and (ii) the pending motion to dismiss pursuant to Fed. R. Civ.  
6 P. 12(b)(6) or, in the alternative, for a more definite statement pursuant to Fed. R. Civ. P.  
7 12(e) filed by defendant First Bank of Delaware ("First Bank Motions"), as follows:

8           1. DPS joins the Zaazoom Motion in its entirety. With respect to the  
9 argument therein that plaintiffs fail to state a claim upon which relief can be granted  
10 because they do not allege that the purported misconduct occurred in Arizona, DPS  
11 supplements the Zaazoom Motion as follows:

12 DPS neither resides in nor conducts business in Arizona, but is a citizen of  
13 and operates out of New York. Therefore, none of DPS's alleged misconduct occurred in  
14 Arizona.

15           2. DPS joins the First Bank Motions with respect to the argument therein  
16 that plaintiffs fail to state a claim upon which relief can be granted or are so vague and  
17 ambiguous in their allegations that a response cannot reasonably be prepared because:  
18 (i) the Electronic Communications Privacy Act, 18 U.S.C. § 2510, *et seq.* (the "Wiretap  
19 Act") does not provide for aiding and abetting liability; and (ii) plaintiffs fail to allege any  
20 facts sufficient to constitute an "interception" in direct violation of the Wiretap Act. DPS  
21 supplements the First Bank Motions with respect to this argument as follows:

22 Plaintiffs allege that they affirmatively provided their banking information to  
23 payday loan websites; they do not allege that their transmission of this information was in  
24 any way involuntary. Second Amended Complaint ("SAC") at 1. The Zaazoom  
25 Defendants<sup>1</sup> purportedly gathered this information from the payday loan websites; again,

<sup>1</sup> The SAC defines the "Zaazoom Defendants" as Zaazoom Solutions, LLC, Zaza Pay LLC, MultiECom, LLC, Online Resource Center, LLC, Moe Tassoudji, and Bill Cuevas.

1 plaintiffs do not allege that the payday loan websites' purported transmission of this  
 2 information was in any way involuntary. *Id.* According to plaintiffs, DPS, along with  
 3 other defendants, "provided material assistance" to the Zaazoom Defendants in creating  
 4 remote checks using this information, thereby implying that DPS came into possession of  
 5 such information; but yet again, plaintiffs do not allege that the Zaazoom Defendants'  
 6 purported transmission of information to DPS was in any way involuntary. *Id.*

7 Plaintiffs allege nothing more than that DPS received an electronic  
 8 communication voluntarily transmitted by the Zaazoom Defendants, which was in turn  
 9 voluntarily transmitted by the payday loan websites, which was in turn voluntarily  
 10 transmitted by plaintiffs, which cannot furnish a basis for liability under the Wiretap Act.  
 11 *See Crowley v. CyberSource Corp.*, 166 F. Supp. 2d 1263, 1269 (N.D. Cal. 2001)  
 12 ("completing a communication" does not constitute an "interception" within the meaning  
 13 of the Wiretap Act); *see also* Dkt. #65 (First Bank's Reply in Support of Motion to  
 14 Dismiss) at 14. Otherwise, this "would be akin to holding that one who picks up a  
 15 telephone to receive a call has intercepted a communication" and "effectively remove from  
 16 the definition of intercept the requirement that the acquisition be through a 'device.'"  
 17 *Crowley*, 166 F. Supp. 2d at 1269.

18 As plaintiffs fail to allege any facts showing that DPS "intercepted" an  
 19 electronic communication within the meaning of the Wiretap Act, and no aiding and  
 20 abetting liability exists under the Wiretap Act for any alleged "material assistance" DPS  
 21 provided to the Zaazoom Defendants, this Court should dismiss pursuant to Fed. R. Civ. P.  
 22 12(b)(6) plaintiffs' third claim for relief for violation of the Wiretap Act or, in the  
 23 alternative, order pursuant to Fed. R. Civ. P. 12(e) that plaintiffs provide a more definite  
 24 statement of that claim.

25

26

27

28

1 Dated: February 13, 2012

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

2

By

/s/ Neil A.F. Popović

3

NEIL A.F. POPOVIC

4

MEREDITH A. JONES-MCKEOWN

5

LAI L. YIP

6

Attorneys for Defendant

7

DATA PROCESSING SYSTEMS, LLC

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28